

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK**

In re:

Stephen E. Gothard,
Debtor.

Index No.: 04-14747

Stephen E. Gothard,

Plaintiff,

vs.

Citifinancial Mortgage Company, Inc. successor by merger
to Associates Home Equity Services, Inc.,

Defendant.

COMPLAINT

Adv.Pro.#:

Stephen E. Gothard, plaintiff, by and through his attorneys, O'Connell and Aronowitz, P.C., respectfully alleges that:

1. Plaintiff is the debtor in this bankruptcy proceeding.
2. Upon information and belief, the defendant herein is, and at all times relevant was, a domestic banking corporation organized and existing under the laws of the State of New York, having its offices and principal place of business at 250 Carpenter Freeway, Irving Texas, 75062.
3. This adversary proceeding concerns the extent of a lien held by the defendant on real property more commonly referred to by its street address as 26 Onchiota Road, Vermontville, New York 12989 (hereinafter referred to as the "Subject Property").
4. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §157 and 28 U.S.C. §1334 as well as 11 U.S.C. §506 and Bankruptcy Rule 7001.
5. This is a core proceeding under 28 U.S.C. §157(b)(2)(K).
6. Plaintiff owns the Subject Property in fee.
7. The Subject Property is not the plaintiff's residence.
8. Defendant holds a mortgage on the Subject Property which secures an indebtedness of more than \$200,000.00 which consists of principal, interest, late charges and any other

fees and costs to which the debtor is entitled (hereinafter referred to as "The Indebtedness").


9. The Indebtedness exceeded the fair market value of the Subject Property on the date that the plaintiff filed his petition herein - July 19, 2004.
10. The Subject Property had a fair market value of no more than \$89,000.00 on the date the petition was filed.
11. Pursuant to 11 U.S.C. §506(a) the defendant has a secured claim which does not exceed the fair market value of the Subject Property on the date of the filing, or \$89,000.00, and an unsecured claim in the amount by which The Indebtedness exceeded \$89,000.00 on the date of the filing of the petition herein.

WHEREFORE, it is respectfully requested that the Court issue a judgment that:

- a) declares that The Indebtedness is undersecured and was undersecured on the date of the filing of the petition herein;
- b) determines the value of both the secured portion and the unsecured portion of The Indebtedness; and
- c) any such other, further and different relief that to this Court seems necessary and appropriate.

Dated: February 1, 2005
Plattsburgh, New York

O'CONNELL AND ARONOWITZ, P.C.



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